



MINUTES

**CIVIL SERVICE COMMISSION
CITY OF WEST ALLIS**

DISCIPLINARY GRIEVANCE HEARING

September 28, 2016

Room 128 – West Allis City Hall

PRESENT: Commissioners Diane Kucharski, Chairperson
Mary Cay Freiberg
Robert O'Donnell
Judy Shabman
Walter Zehm

ALSO PRESENT: Audrey Key, Human Resources Director/Agent for the Civil Service Commission; Lynn Jopek, HR Assistant III; Michael Lewis, Director of Public Works/Engineering; David Wepking, Assistant Director of Public Works; Timothy Last, Sanitation and Streets Superintendent; Sheryl Kuhary, Assistant City Attorney III; Richard Schurman, Equipment Operator II; Gary Banaszynski, Equipment Operator I; Thomas Orr, Equipment Operator I; Patrick Walker, GIS Supervisor; Jane Barwick, Principal HR Analyst; Mary Yusefzadeh, HR Assistant III; Debra Huntley; Wende Zinda; Debbie Orr; Richard Falk; Scott Travers; Nick Sekula; Diane Narlock; Joe Narlock; Michael Moran; Ken Bronnson; Rick Kaczor; Sara Diebitz; Don Molleson; Pat Waystedt; Greg Telford; Paul Barwick; Brenda Schmid; Joe Woda-Rudolph; Steve Stern; Glenn Byal; Michael Weisnicht; Jerry Kucharski; Gerald Bennett; Tad Powalisz; Doug Nardi; Luke Molthen; John Consiglero.

Chairperson Kucharski called the meeting to order at 6:00 p.m.

The Human Resources Director opened the meeting indicating the Civil Service Commission of the City of West Allis scheduled a Disciplinary Grievance Hearing for Wednesday, September 28, 2016, at 6:00 p.m., pursuant to Rule IX, Section 2 of the Civil Service Commission Rules and Regulations. Following the presentation of evidence, the Civil Service Commission will adjourn to meet in closed session at said time and place for the purpose of conducting deliberations with regard to making a decision. Immediately upon the completion of the closed session, the Civil Service Commission will reconvene in open session at said time and place for the purpose of announcing its decision regarding the disciplinary action and considering any other matters which may properly come before the Commission.

The Human Resources Director stated the Hearing will be audio-recorded and such will serve as the official record of the proceedings.

The Human Resources Director requested those involved in the Hearing proceedings to present themselves:

- Audrey Key – Agent for the Civil Service Commission;
 - Lynn Jopek – Note taker;
 - Sheryl Kuhary – Assistant City Attorney III/legal counsel for the Civil Service Commission;
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- Commissioners: Diane Kucharski – Chairperson, Mary Cay Freiberg, Robert O'Donnell, Judy Shabman, and Walter Zehm;
- Appointing Authority representatives: Michael Lewis, Director of Public Works/City Engineer and David Wepking, Assistant Director of Public Works;
- Appellants and their representative(s): Richard Schurman - Equipment Operator II, and representative Debra Huntley; Gary Banaszynski - Equipment Operator I; and Thomas Orr - Equipment Operator I;

Chairperson Kucharski inquired whether the Parties were ready to proceed; affirmative response was received from the Appointing Authority representatives and Appellants.

Chairperson Kucharski opened the Hearing proceedings with the following statements:

- “1. Under the provisions of section 2.76(7) of the West Allis Revised Municipal Code, this Hearing has been convened for the purpose of Hearing the appeal of the discipline imposed upon Richard Schurman, Gary Banaszynski, and Thomas Orr, to make a decision based upon the evidence presented, and to take appropriate action based upon that decision. This Commission will hear and examine all the evidence deemed admissible concerning the discipline imposed through inquiry into both sides. The Commission will evaluate and impartially weigh the evidence.
2. Each Appellant carries the burden of production and proof. The sole issue before the Commission shall be “Based upon the preponderance of the evidence presented, has the employee proven the disciplinary action was arbitrary and capricious?” An action is deemed to be arbitrary and capricious if it is unreasonable or without a rational basis. In other words, if any reasonable view of the evidence sustains the action, it may not be disturbed. In making such determinations the Commission shall accord the decision of the Appointing Authority a presumption of correctness and validity.
3. This Hearing is open to the public.
4. A record of the proceedings is being made by audio recording.
5. The Assistant City Attorney is present and will serve as legal advisor to the Commission. The Assistant City Attorney will advise the Commission on questions of law and procedure and may also direct questions to witnesses on behalf of the Commission.
6. Each Appellant may be represented by an attorney at his own expense before this Commission.
7. The Appellants and Appointing Authority may present evidence and call and examine witnesses and cross-examine witnesses of the other party. Such witnesses will be sworn.
8. Subject to a motion for consideration by the full Commission, made by a member of the Commission, I will rule upon all questions, objections and motions, as to procedural matters, admissibility of evidence and similar issues. All objections, questions and motions should be directed to me.
9. Both the Appellants and Appointing Authority may compel the attendance of witnesses by subpoena which I shall issue upon your request under the provisions of Chapter 885, Wis. Stats. Both parties have been previously notified of the right to compel witnesses and have been given an opportunity to seek subpoenas.

10. Each Appellant may testify or offer testimony on his behalf with regard to the discipline imposed. However, whatever you say will be considered as evidence. Further, if you do testify, you may be cross-examined.
11. The Appointing Authority shall present evidence first, and then the Appellants shall present their evidence. Each party will have the opportunity to provide rebuttal testimony.
12. Each party will have the opportunity to make an opening statement which is intended to explain the nature of the case and summarize the arguments to be made and the evidence that the party intends to offer during the Hearing.
13. After all the evidence has been presented each party will have the opportunity to make a closing statement which is a summation of their case."

Chairperson Kucharski inquired whether any Party wished to make an opening statement wherein the Appointing Authority would proceed first, followed by the Appellants. Affirmative response was received from the Appointing Authority representatives, Mr. Lewis and Mr. Wepking, and Appellants, Mr. Schurman and Mr. Orr, with Mr. Banaszynski declining.

Upon completion of opening statements by Mr. Wepking on behalf of the Appointing Authority, and Appellants, Mr. Schurman and Mr. Orr, Attorney Kuhary distributed Exhibits 1 – 6 (notification of disciplinary action and related grievance/written appeal) to the Parties (Civil Service Commissioners, Appointing Authority, and Appellants).

Chairperson Kucharski then asked the Appointing Authority to present such evidence as they may have relative to the discipline imposed, followed by the Appellants.

Mr. Wepking presented the Appointing Authority's evidence (including Exhibits 7 – 18 and testimony of sworn-in witness, Timothy Last, Sanitation and Streets Superintendent) and each Appellant, Mr. Schurman, Mr. Banaszynski, and Mr. Orr, presented their cases.

Commissioners and Attorney Kuhary questioned evidence by both the Appointing Authority and the Appellants during the course of the proceedings. Both Parties were provided the opportunity to present further evidence and offer rebuttal testimony.

Chairperson Kucharski inquired whether the Appointing Authority and Appellants wished to make a closing statement. Mr. Orr provided a closing statement; all others, Appellants and Appointing Authority, declined.

Chairperson Kucharski stated having heard all evidence in this case, the Commission would convene into closed session for the purpose of deliberations with regard to making a Decision. Attorney Kuhary would attend the closed session to render such legal advice as required. Upon completion of the closed session, the Commission would then reconvene in open session and, at that time, announce its Decision.

Chairperson Kucharski called for a motion to convene in closed session at said time and place to consider dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person, pursuant to Section 19.85(1) (b), Wisconsin Statutes.

Upon a motion by Chairperson Kucharski and after roll call of all Commissioners, it was unanimously agreed upon to meet in closed session at 9:34 p.m.

At 10:37 p.m., after adjournment of the closed session, and upon motion made and seconded and unanimously passed, the Disciplinary Action Grievance Hearing of the Civil Service Commission reconvened in open session. Chairperson Kucharski indicated to let the record reflect that the following persons are present: Diane Kucharski – Chairperson, Mary Cay Freiberg, Robert O'Donnell, Judy Shabman, and Walter Zehm.

Chairperson Kucharski presented the Decision, stating while in closed session, motions were made, seconded and unanimously made with the following determination:

“Having heard and reviewed the evidence presented in this matter, taking into consideration, among other things, the number of “idle incidents” which constituted misconduct but also considering the positive performance evaluations and the delay in imposing the discipline from when the misconduct occurred, it is the Determination of the City of West Allis Civil Service Commission that the discipline imposed on Richard Schurman, Gary Banaszynski, and Thomas Orr is not sustained.

NOW, THEREFORE IT IS ORDERED that the following discipline be imposed:

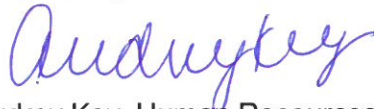
- Richard Schurman shall receive a 15-day unpaid suspension, the dates to be determined by the Appointing Authority;
- Gary Banaszynski shall receive a 15-day unpaid suspension, the dates to be determined by the Appointing Authority; and
- Thomas Orr shall receive a 10-day unpaid suspension, the dates to be determined by the Appointing Authority.”

Chairperson Kucharski stated any appeal of this matter, to the Circuit Court of Milwaukee County, must be commenced within thirty (30) days of the Parties' receipt of the Findings, Determination and Order.

Chairperson Kucharski directed Attorney Kuhary to place the Decision of the Commission in writing and file it with the City Clerk within three business days and further directed her to serve a copy of the Commission's Decision upon each of the Parties.

The meeting adjourned at 10:41 p.m. by motion made, seconded and unanimously passed.

Respectfully submitted,



Audrey Key, Human Resources Director and
Agent for the West Allis Civil Service Commission

The City of West Allis is an Equal Opportunity/Affirmative Action Employer and does not discriminate against individuals on the basis of race, color, religion, age, marital or veterans' status, sex, national origin, disability, or any other legally protected status in the admission or access to, or treatment or employment in, its services, programs or activities.

Upon reasonable notice, the City will furnish appropriate auxiliary aids and services when necessary to afford individuals with disabilities an equal opportunity to participate in and to enjoy the benefits of a service, program, or activity provided by the City.

It is the policy of the City of West Allis to provide language access services to populations of persons with Limited English Proficiency (LEP) who are eligible to be served or likely to be directly affected by our programs. Such services will be focused on providing meaningful access to our programs, services, and/or benefits.